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HOME OFFICE
QUEEN ANNE'S GATE LONDON SW1H 9AT

22 February 1984

*This will come to
OD (K) in due course.
N.B.P.R.*

Dear Peter,

*A.S.C. 2 1/2
p.a.*

FUTURE OF HONG KONG: WORKING PAPER ON NATIONALITY ETC*file with ATC*

Thank you for your letter of 20 February enclosing a draft working paper. The Home Secretary notes that you think it tactically desirable to put to the Chinese the proposal that BDTs who hold that status by virtue of their connection with Hong Kong should continue to enjoy it after July 1997, even though Hong Kong would cease to be a dependent territory. The Home Secretary is content with that proposal on the basis

- (a) that Hong Kong would nevertheless be removed from the list of Dependent Territories in Schedule 3 to the British Nationality Act 1981, and
- (b) that the acquisition of Hong Kong (China) citizenship would be automatic, and not on application, so that all concerned became dual nationals in 1997. He attaches the greatest importance to this requirement.

He thinks that unless there is this automatic dual nationality there must be an assumption that those who do not apply for a new citizenship remain more British than Hong Kong (Chinese), and that, whatever agreement was reached at the time, there would be a risk that Hong Kong would expel some of those who had only British nationality, and that Britain would have to accord them entry to this country.

The Home Secretary has no comments on the draft working paper which incorporates the concept of automatic dual nationality, but considers that the present draft of point 4 in the points to make to EXCO is not consistent with it and should be amended to remove the element of choice.

The Home Secretary notes that if, as you expect, the Chinese will not accept the continued use of the term "British Dependent Territories Citizen" the Foreign Secretary would want to seek an equivalent arrangement involving the creation of a new category such as British Associated Citizens. To do so would add yet another category of British national to the complicated structure of the British Nationality Act and invite awkward questions as to the difference between a British Associated Citizen and a British Overseas Citizen. Since it is not essential to settle the details of the fall-back position this week, the Home Secretary suggests that this point should be discussed further between officials, but he is not so far persuaded that it would be desirable to create such a new category.

/The Home Secretary

P F Ricketts, Esq

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The Home Secretary has seen the Governor's recent telegram but hopes Mr Luce will be able to persuade members of the Executive Council that there is no realistic alternative to the concept of automatic dual nationality if they are to retain the British link as they wish to do. It is of course important for the Council not to be given any indication that by holding out for the concept of a choice of nationality those who are now subject to UK immigration control might stand a greater chance of securing a right of entry to this country.

I am copying this letter to John Coles.

I am sure,
Nigel

N A PANTLING

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22 JAN 1984

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Foreign and Commonwealth Office

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London SW1A 2AH

N. D. P. R.

Amint per G

20 February 1984

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A. J. C. 207
r.
v.a.

Dear Hugh,

Future of Hong Kong: Working Paper on Nationality,
Citizenship, Freedom of Travel, Residence, Emigration
and Immigration

Sir Geoffrey Howe spoke to Mr Brittan recently about this working paper. He said that the most difficult part in it was the position after 1 July 1997 of those British Dependent Territories citizens who derive their status by virtue of a connection with Hong Kong (BDTC(HK)s).

Since then FCO and Home Office officials have been in contact. The enclosed copy of the draft working paper reflects helpful suggestions by your officials. The paper also incorporates the views of the Governor of Hong Kong and our Ambassador in Peking and has been agreed by FCO Ministers. We aim to telegraph an agreed text to Hong Kong this week so that Mr Luce can discuss the paper with the Executive Council during his visit to Hong Kong on 25-28 February. Thereafter the paper will be circulated to members of OD(K) with the aim of passing it to the Chinese in the middle of March.

As you will be aware, the question of nationality and citizenship is a very sensitive one in Hong Kong. The enactment of the British Nationality Act 1981 caused much resentment in the territory and the introduction of separate citizenship categories to replace the unitary citizenship of the United Kingdom the colonies was seen as "downgrading" the status of holders of Hong Kong British passports, even though their immigration status with regard to the UK was not changed. You will be familiar with the subsequent discussions on nomenclature in passports, in particular the endorsement on page 5, and on discretionary registration under section 4(5) of the Act.

When Mr Luce met the Unofficial Members of the Executive Council during their recent visit, the sensitivity of the issue was confirmed. The Unofficials emphasised that there would be very strong resistance in Hong Kong to any further erosion of BDTC status. They urged not only that we should seek to retain all the existing rights of BDTC (HK)s after 1997 but that we should also argue strongly for the retention of the term itself, even though Hong Kong would no longer be a dependent territory. They showed no inclination to consider

/a change



a change to another form of British nationality. Indeed, they suggested that this point would be the main issue on which Hong Kong people would judge the acceptability of an overall settlement on the future of the territory.

The Chinese have made no formal statements yet of their position on nationality. But they have indicated in the margins of the talks that they would be opposed to the retention of BDTC status. We believe, however, that we must make this our opening bid in order to show EXCO that we will do our best for Hong Kong. But we will need a fall-back position. We propose that this should be to retain the rights of BDTC (HK)s under another new name (such as British Associated Citizens).

An important feature of the working paper is that all BDTC(HK)s (as well as other Hong Kong people) would have the right of abode in Hong Kong (China). We have included in the working paper the point, made by your officials, that this entitlement would need to be indicated in their British passports. This would obviously be essential whether they were BDTCs or British nationals under another name.

Whatever the eventual arrangement, the objective must be to bolster confidence in Hong Kong and to lessen the incentive for people to seek to leave. The presentation of our proposals to EXCO will therefore be important. I enclose a copy of the points which we propose to use for this purpose.

I should be grateful to know the Home Secretary's views on this working paper, and in particular on the retention of BDTC status after 1997. As I have indicated in paragraph 2 above, we are working to a very tight schedule. It would therefore be helpful to have your comments as soon as possible.

I am copying this letter to John Coles (No 10).

Yours ever,

Peter Ricketts

(P F Ricketts)
Private Secretary

H H Taylor Esq
PS/Secretary of State for the
Home Department

UTURE OF HONG KONG: WORKING PAPER ON NATIONALITY, CITIZENSHIP,
FREEDOM OF TRAVEL, RESIDENCE, EMIGRATION AND IMMIGRATION

CHINESE PLAN

1. The SAR would enjoy a high degree of autonomy. The current social and economic systems would remain unchanged. So too would the lifestyle. Freedom of travel, of migration and change of residence would be ensured. The Hong Kong SAR would be able to issue its own travel documents for entry into and exit from Hong Kong. The SAR could on its own enter negotiations with foreign countries in the fields of the economy, culture and tourism and could sign agreements in these fields as Hong Kong, China.

2. No formal proposals have been made by the Chinese side on nationality and citizenship. The British side understand however that the Chinese side intends to create a distinctive Hong Kong (China) citizenship in 1997 for persons whose national status would depend upon connection with the Hong Kong SAR.

(A) IMPLICATIONS: NATIONALITY AND CITIZENSHIP

3. At present about 3 million people hold the status of British dependent territories citizen (BDTC) as a result of their connection with Hong Kong. According to the law in force in the United Kingdom and Hong Kong, such persons would continue to hold this status after 1 July 1997. Amending legislation in the United Kingdom would be required if the rights pertaining to this status were to be retained under a new name. In order to avoid abrupt change, and in the interests of reassuring the people of Hong Kong that there would be continuity in this important area, all persons who immediately before 1 July 1997 were BDTCs by virtue of their connection with Hong Kong would on and after that date hold Hong Kong (China) citizenship as well as continuing to retain such BDTC status. In accordance with the present law, this would as a general rule be transmissible by descent for one generation.

4. Eligibility for Hong Kong (China) citizenship would be defined under the laws of the Hong Kong SAR. The following would become

/Hong Kong

Hong Kong (China) citizens, in addition to any other national status they might hold:-

(a) all persons who immediately before 1 July 1997 were BDTCs as a result of their connection with Hong Kong;

(b) all persons born in Hong Kong before 1 July 1997 who were not BDTCs, unless they were nationals of a third state;

(c) all persons defined under the Hong Kong Immigration Ordinance (cap 115) as "Chinese residents" and all persons in Hong Kong on 1 July 1997 who, by continuing to reside there for the qualifying period, will become such "Chinese residents";

(d) all persons born in Hong Kong on or after 1 July 1997;

(e) All persons who fulfil the naturalization requirements of the SAR Government.

(B) IMPLICATIONS: FREEDOM OF TRAVEL

5. The issue of Hong Kong (China) travel documents would continue in accordance with the policy followed immediately prior to 1 July 1997 for Hong Kong travel documents and would be a matter for the SAR Government acting on its own authority. A consular officer of the UK Government would issue British travel documents.

6. Hong Kong (China) travel documents would be valid for all countries or territories (subject only to immigration requirements of the country or territory of destination) and would guarantee the holder's right of return to the SAR within the period of validity of the document. The SAR Government would only withhold or withdraw travel documents in specific circumstances defined by the law of the SAR.

7. The Government of the SAR would be empowered to negotiate new visa abolition agreements for holders of Hong Kong (China) travel documents. HMG would use its good offices to assist this. It would also be for the SAR to determine what the rights of access to the

/SAR

SAR should be for nationals not from states party to such a visa abolition agreement. HMG would try to persuade third states, which immediately prior to 1 July 1997 allowed visa-free entry to persons holding a form of British nationality who acquired their status by virtue of a connection with Hong Kong, to continue to allow them visa-free entry after that date.

8. Persons travelling abroad would be entitled to the range of consular services and the degree of consular protection consistent with their nationality status.

(C) IMPLICATIONS: RESIDENCE, EMIGRATION AND IMMIGRATION

9. Existing rights of abode in Hong Kong including the existing freedom from removal or deportation would be enjoyed by citizens of Hong Kong (China).

10. Subject to exceptions which are both allowed by law and consistent with the International Covenant on Civil and Political Rights, all persons would be free to leave the SAR in order to emigrate or for any other purpose. Holders of valid Hong Kong (China) travel documents, and of valid BDTIC (Hong Kong) travel documents would have a right to enter and re-enter the SAR, and arrangements would be required to ensure that each of these documents stated that right. The present arrangements for allowing travel between Hong Kong and Macau and the present arrangements for allowing travel between Hong Kong and other parts of China would continue.

11. The existing arrangements for persons with no right of abode in Hong Kong to visit, reside in and leave the SAR would remain. Any changes to these arrangements would be the sole responsibility of the SAR Government.

12. Persons who have no right of entry to the Hong Kong SAR would not be permitted to enter the SAR without the permission of the immigration authorities of the SAR.

13. All illegal immigrants or overstayers would be removed in

accordance with the laws of the Hong Kong SAR.

14. Entry into the Hong Kong SAR from other parts of China would continue on the same basis as at present. Any changes in these arrangements would have to be agreed between the SAR Government and the Central government of the PRC.

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WORKING PAPER ON NATIONALITY, CITIZENSHIP, FREEDOM OF TRAVEL, RESIDENCE, EMIGRATION AND IMMIGRATION

POINTS TO MAKE WHEN OPENING DISCUSSION WITH EXCO

1. Important and sensitive subject.
2. Realise significance members give to this paper. Points made by Unofficials on 17 January have been carefully considered and taken into account.
3. Prepared to try to persuade Chinese to accept retention of BDTc status (rights and name) for those holding it in 1997. Will emphasise importance of continuity and minimum change. But must warn members that we do not think Chinese will agree to this. If not, may be necessary to fall back to alternative proposal eg retention of rights under another name (ie new category of citizenship).
4. Eligibility for citizenship of Hong Kong SAR important. Must be available to all born in or qualified as residents of Hong Kong to avoid statelessness. Will have to persuade Chinese to accept dual nationality for those who wish to be BDTcs and Hong Kong (China) citizens.
5. China have already agreed that SAR may issue own travel documents. Hope third countries will agree to negotiate visa abolition agreements with SAR. HMG will do what it can to help. Important for documents to state clearly that holder has right of abode in SAR. BDTc passports too will need SAR stamp stating this.
6. Aim to maintain maximum continuity in rights of residence and Immigration controls.

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Hong Kong Future Pt 12



20 JAN 1984